Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Iowa Network Access	)	WC Docket No. 18-60
Division Tariff F.C.C. No. 1	)	
	)	

COMMENTS OF COMPETITIVE LOCAL EXCHANGE CARRIERS OPPOSSING AT&T'S PETITION FOR RECONSIDERATION

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SUMMARY

Through the Commission's July 30, 2018 Memorandum Opinion and Order, the agency made a well-reasoned and detailed calculation regarding the benchmark rate that Aureon must bill AT&T and other IXCs for use of its CEA service, determining that such a rate is to be calculated based on CenturyLink's transport *rate*, but Aureon's weighted average *mileage* of transport. AT&T disagrees with the Commission's methodical approach, however, and through its Petition for Reconsideration it seeks to unwind this decision and replace it with regulatory arbitrage in its favor.

As noted throughout AT&T's Petition, the IXC would like the Commission to walk back years of Commission precedent and rewrite Commission rules; it would like the Commission to hold that Aureon's benchmark rate for CEA service should be based on a hypothetical transport scenario in which AT&T would no longer have to pay for most of the mileage on Aureon's network, while still requiring Aureon to transport AT&T's traffic for AT&T's benefit. As described herein, AT&T's interpretation of the CLEC benchmark rules are patently incorrect and contrary to FCC precedent and policy. Moreover, AT&T's Petition is improper and procedurally invalid, as AT&T has failed to provide the Commission with any new evidence, fact, or omission that could have (or should have) been presented to the Commission before it determined Aureon's benchmark rate.

Consequently, the CLECs believe that the Commission should summarily deny AT&T's Petition as procedurally defective and should stand by its well-reasoned decision.

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The Competitive Local Exchange Carriers ("CLECs")[1] respectfully submit these comments in response to the Commission's Public Notice[2] of September 4, 2018, inviting comment on AT&T Services, Inc.'s ("AT&T") Petition for Reconsideration of the Commission's July 31, 2018 Memorandum Opinion and Order,[3] in which it appropriately denied AT&T's request to calculate the benchmark rate for Aureon's CEA service based on the mileage that AT&T asserts CenturyLink would charge if AT&T delivered its long-distance traffic to the CenturyLink tandem switch closest to the call's point of termination.

I. INTRODUCTION

Through its July 31, 2018 Memorandum Opinion and Order (the "*Rate Order*"),[4] the Commission made a well-reasoned and detailed calculation regarding the benchmark rate that

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[1] The Competitive Local Exchange Carriers represented herein include: BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, OmniTel Communications, and Louisa Communications.

[2] *Pleading Cycle Established for AT&T Petition for Reconsideration of Memorandum Opinion and Order In Iowa Network Access Division Tariff F.C.C. No. 1*, Public Notice, DA 18-910, WC Docket No. 18-60 (Sept. 4, 2018) ("Public Notice").

[3] Petition for Reconsideration of AT&T Services, Inc., WC Docket No. 18-60, 2018 WL 3641034 (Aug. 30, 2018) ("AT&T's Petition" or the "Petition").

[4] Memorandum Opinion and Order, *In re Iowa Network Access Division Tariff F.C.C. No. 1*, 2018 WL 1898713 (rel. July 31, 2018) ("*Rate Order*").

Aureon is to bill AT&T and other IXCs for use of its CEA service, determining that such a rate is to be calculated based on CenturyLink's transport *rate*, but Aureon's weighted average *mileage* of transport. AT&T, however, disagrees with the Commission's methodical approach, and through its Petition it seeks to unwind this decision and replace it with regulatory arbitrage in its favor. According to AT&T, Aureon's benchmark rate for CEA service should be based on a hypothetical transport scenario in which AT&T would no longer have to pay for most of the mileage on Aureon's network, yet Aureon would still be required to transport AT&T's traffic for AT&T's benefit.

AT&T's perspective on how the CLEC benchmark rules should apply to the realities of Aureon's CEA service and transport network are meritless. In dismissing these arguments in its *Rate Order* the Commission appropriately reached its conclusions. As these comments make clear, AT&T has presented no evidence to support its view of the CLEC benchmark rules nor its belief that rates are to be premised on hypothetical, rather than functional, in-use networks. Moreover, the IXC has not presented any new evidence, fact, or omission that could have (or should have) been presented to the Commission before it released its decision in the *Rate Order*. For these reasons, then, the Commission should stand by its well-reasoned decision and should deny AT&T's Petition for Reconsideration.

II. AT&T's PETITION SHOULD BE SUMMARILY DENIED BECAUSE IT MERELY REARGUES POINTS PREVIOUSLY ADVANCED AND REJECTED

In petitioning the Commission to reconsider its calculation of the CLEC benchmark rate for Aureon's CEA service based on the mileage that CenturyLink would charge for the competitive service, AT&T relies on—and cites to—arguments that it previously made in both

its Opposition to Aureon's Direct Case[5] and its Surrebuttal in Support of its Opposition to Aureon's Direct Case.[6] These arguments, however, were rejected by the Commission in its *Rate Order*, wherein the Commission correctly determined that the applicable benchmark rate for Aureon's CEA service should be based on CenturyLink's *rate*, but Aureon's *mileage*. Accordingly, the Commission should summarily deny AT&T's Petition, as it merely rehashes these previously rejected arguments and does not present any new, material information, omission, or error upon which reconsideration could be warranted.

The Commission's rules provide that petitions for reconsideration should only be granted in narrowly circumscribed situations.[7] And while a petition may be granted where a party can point to an obvious error or, in some cases, to new arguments or new factual developments, "[i]t is 'settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.'"[8] Thus, a petition for reconsideration that "[f]ail[s] to identify any material error, omission, or reason warranting reconsideration" and/or that relies on "arguments that have been fully considered and rejected by the Commission within the same proceeding," "plainly do not warrant consideration."[9] That is the case here.

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5 AT&T Services, Inc's Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 (May 10, 2018) ("AT&T's Opposition").

6 AT&T Services, Inc.'s Surrebuttal in Support of its Opposition to Aureon's Direct Case, WC Docket No. 18-60, Transmittal No. 36 (June 25, 2018) ("AT&T's Surrebuttal").

7 *See* 47 C.F.R. § 1.106.

8 *In re Qwest Communications Co., LLC, Complainant*, Order on Reconsideration, 26 F.C.C. Rcd 14520, ¶ 5 (2011) (quoting *In re S&L Teen Hospital Shuttle,* Order on Reconsideration, 17 F.C.C. Rcd. 7899, ¶ 3 (2002) (citations omitted)).

9 47 C.F.R. § 1.106(p)(3). As the Commission explained in 2010, "petitions for reconsideration … [that] merely repeat arguments the Commission previously has rejected" are improper. *See In re Amendment of Certain of the Commission's Rules of Practice and Procedure and Rules of Commission Organization*, Notice of Proposed Rulemaking, 25 F.C.C. Rcd. 2430, ¶ 4 (2010).

AT&T's Petition merely rehashes the same facts and arguments that it made in both its Opposition and its Surrebuttal, which the Commission outright rejected in the *Rate Order*. A central tenant of AT&T's Petition is as follows:

> Simply put, a CLEC cannot exceed the "rate charged by the competing ILEC," and the rate charged by the competing ILEC must—by Commission rule—be based on the distance between the competing ILEC's tandem switching offices and the sub-tending LEC end offices. 47 C.F.R. § 69.111(a)(2)(i).[10]

This argument is one that the Commission should certainly be familiar with, as AT&T has made it *repeatedly* in its other briefings to the agency. For example, in its Opposition, AT&T dedicated an entire section to its assertion that "The Benchmark Rate, Using Century Link's [*sic*] Rates **and Mileage**, Is a Maximum of $0.003188, Far Lower Than Aureon's Tariffed Rate."[11] Moreover, in the proceeding section, AT&T detailed its view of the CLEC benchmark rules, asserting that the appropriate way to calculate the CLEC benchmark rate was to consider the mileage between the competing ILEC tandem switching offices and the subtending LEC end offices:

> Aureon's assumption that, under the Commission's CLEC benchmark rules, the traffic at issue would be hauled an average of over 100 miles is fundamentally wrong. Under the CLEC benchmark rules, the competing ILEC's rate is the "prevailing market price" that CLECs must meet or beat in any tariff (otherwise, mandatory detariffing applies). As explained above, because CenturyLink has tandems in seven different locations in or near Iowa—all close to Aureon's active POIs—the prevailing market price cannot be based on the assumption that long distance carriers would hand off their traffic to CenturyLink in Des Moines, and then have it hauled, on average, 104 miles to other CenturyLink tandems. Instead, to reduce the access costs associated with long transport hauls, IXCs would hand off traffic to CenturyLink at the CenturyLink tandem closest to the LECs now subtending Aureon. Accordingly, **the prevailing market price under the Commission's CLEC benchmark rules requires use of the shorter mileage employed in AT&T's calculations: either 1 mile if CenturyLink handed off the traffic to the subtending LEC at the location of the nearby POI (for a benchmark rate of $0.002558 per minute), or an average of 22 miles, if**

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10 AT&T's Petition at 8.

11 AT&T's Opposition at 25 (emphasis added). *See generally id.* at 25-28.

> **CenturyLink transported the traffic from its tandem to the subtending LEC local exchange (for a maximum benchmark rate of $0.003188**).[12]

AT&T thereafter doubled-down on this argument, asserting again in its Surrebuttal how it believed the CLEC benchmark rules should apply to Aureon's tariff:

> Aureon's calculations are improperly based on the inclusion of over 100 miles of transport, leading to a benchmark rate between $0.005526/min. and $0.00608/min.—far above the actual (and conservative) maximum benchmark rate of $0.003188/min.
>
> As discussed above and in AT&T's Opposition, the Commission's benchmark rules are meant to mimic a competitive market, in which competitors could not charge rates higher than the prevailing market price of the incumbent. **As AT&T showed, based on the locations of CenturyLink's tandem switches at or near the primary Aureon POIs, and assuming, conservatively, that CenturyLink would provide tandem switching and *all* of transport between the tandem switch and Aureon's subtending LECs—an average of 22 miles—then CenturyLink's rate would be $0.003188/min. This composite rate is the maximum prevailing market price, which Aureon would need to meet or beat in a competitive market, and thus is the proper CLEC benchmark rate.** By contrast, Aureon's proffered benchmark rates of $0.005526/min. and $0.00608/min. are inaccurate, and Aureon could not sustain those rates in a competitive market, because IXCs would use CenturyLink's lower-priced tandem switching and transport service to complete calls to and from the end users served by the LECs subtending Aureon.
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> * * *
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> **[U]nder the Commission's benchmark rules, Aureon, as the CLEC, must meet or beat the prevailing market price, which is the price of CenturyLink's tandem and transport services. The benchmark rate is not based on what the incumbent would charge to provide the CLEC's service.** In fact, as explained above, CenturyLink's tandem switching and transport service—either using 22 miles or a single mile—provides the same functionality as Aureon's tandem switching and transport service but at a much lower rate. Thus, allowing Aureon to file a tariff with a higher rate, on the grounds that it could force IXCs to pay for transport services consisting of far longer transport mileages than that offered by CenturyLink for equivalent service, is precisely contrary to the text and purpose of the Commission's benchmark rule.[13]

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12 *Id.* at 29-30 (citations omitted) (emphasis added).

13 AT&T's Surrebuttal at 15-16, 18-19 (citations omitted) (emphasis added).

The Commission, however, did not buy into AT&T's argument nor its view of the CLEC benchmark rules, choosing instead to pointedly cite to and reject the carrier's flawed assertions:

> We are [] not persuaded that we should use the alternative weighted average mileage calculations offered by AT&T and Sprint, because they do not reflect the traffic volumes and call routing of Aureon's network. **AT&T contends that the mileage used in the composite calculation should reflect the mileage between CenturyLink's tandem switches and the local exchanges of the subtending LECs. We disagree.** If Aureon had adopted a more traditional rate structure, such as that of CenturyLink, it would assess a separate transport mileage rate that would reflect the actual miles of transport provided. **The Commission has never required that the mileage component of competitive LEC transport rates reflect something other than the actual network used, which is what AT&T would have us do here**. Further, the Commission has never precluded a competitive LEC from billing for services (or, in this case, mileage) that it actually provides, at least in the absence of evidence of arbitrage or other abuse of our rules.[14]

AT&T's Petition offers no new facts, argument, or precedent that were not or could not have been raised earlier in this proceeding. Having considered and rejected AT&T's arguments about how the CLEC benchmark rules should work, AT&T's continued rehashing of those same arguments in its Petition presents no basis upon which the Commission should reconsider its decision in the *Rate Order*. The redundant arguments in AT&T's Petition do not warrant the creation of an entirely new policy now any more than they did when AT&T presented them twice before, and the mere fact that AT&T disagrees with the Commission's conclusion is not itself a proper basis upon which reconsideration should be granted.[15] Thus, the Commission

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[14] *Rate Order*, ¶ 42 (citing at times to the various AT&T passages quoted above, including AT&T's Opposition at 25-28 and AT&T's Surrebuttal at 17-19) (footnotes omitted) (emphasis added).

[15] *See, e.g.*, *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration, 29 F.C.C. Rcd. 7515, ¶ 8 (2014) (denying a petition for reconsideration based on an argument that "was specifically considered and rejected [earlier in a rulemaking proceeding]"); *In re Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, Third Memorandum Opinion and Order and Memorandum Opinion and Order, 25 F.C.C. Rcd. 11390, ¶ 11 (2010) (denying a petition for reconsideration that "presents no new arguments or

should summarily deny AT&T's Petition in accordance with Section 1.106(p)(3) of the Commission's rules.[16]

III. THE COMMISSION CORRECTLY APPLIED THE CLEC BENCHMARK SYSTEM IN THE *RATE ORDER*

A. Neither the Text of 47 C.F.R. § 61.26 Nor Commission Precedent Compels Aureon to Base Its Rate on Mileage that Does Not Reflect Its Actual Network

Of course, even if the Commission were to reconsider its decision in the *Rate Order*, there would be no evidence—statutory or otherwise—upon which a different result could be compelled, as the Commission's analysis of its benchmark rules are fully consistent with both the text of those rules and Commission precedent. As a result, AT&T's view of the benchmark rules should be rejected, and the Commission's *Rate Order* decision should remain in place.

While AT&T claims that "the plain text of the CLEC access rules requires CLECs … to use the mileage between the competing ILEC's tandem switching offices and the end offices of the subtending LECs,"[17] its assertion is false. A complete review of Section 61.26 of the Commission's rules shows that, while these rules provide that "the **rate** for the access services provided [by the CLEC] may not exceed the **rate** charged by the competing ILEC for the **same access services**,"[18] the rule does not require that the mileage provided by the CLEC be identical to the mileage of the competing ILEC. Moreover, the Commission imposed no such requirement in either the *Seventh Report and Order*[19] or the *Eighth Report and Order*,[20] wherein the

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information … [but that instead] merely disagrees with the Commission's analysis and conclusion").

16 *See* 47 C.F.R. § 1.106(p)(3).

17 *See* AT&T's Petition at 6.

18 47 C.F.R. § 61.26(f) (emphasis added).

19 *In re Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 F.C.C. Rcd. 9923 (2001) ("*Seventh Report and Order*").

20 *In re Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 F.C.C. Rcd. 9108 (2004) ("*Eighth Report and Order*").

benchmark rules were established and refined. And while AT&T repeatedly tries to frame both of these Orders as supporting its position, it fails to buttress its interpretation with a single Commission statement that reflects the "plain rule" upon which its Petition allegedly relies.

Despite repeatedly presenting its view of the CLEC benchmark rules, AT&T still fails to point to *any* prior FCC precedent requiring CLECs to bill a composite rate that assumes the IXCs are delivering traffic not to the CLEC's switch, but rather to a switch at some other point on the incumbent LEC's network. As the Commission correctly noted in the *Rate Order*, it "has **never** required that the mileage component of competitive LEC transport rates reflect something other than the actual network used," nor has it "[]ever precluded a competitive LEC from billing for services (or, in this case, mileage) that it actually provides."[21] Indeed, the Commission's statements in earlier proceedings and Orders reflect these same sentiments.

In its *Eighth Report and Order*, the Commission made it clear that, when a CLEC "handles interexchange traffic that is not originated or terminated by the competitive LEC's own end-users,"[22] the CLEC should charge a rate that is "no higher than the rate charged by the competing incumbent LEC for the same functions."[23] The Commission expressly confirmed that the CLEC should charge for "common transport when they provide it."[24] Notably, the Commission directed the CLEC to charge comparable rates for "the same functions," which in

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21 *Rate Order*, ¶ 42. In making these statements, the Commission relied on its previous decisions interpreting Section 61.26(f) of the Commission's rules. *See id.* ¶ 42 n.146 ("For example, the Commission considered and rejected an argument that a competitive LEC should be prohibited from charging for tandem switching that it provides when an incumbent LEC is already assessing a tandem switching charge for the same traffic.") (citing to the Commission's *Eighth Report and Order*, ¶ 13).

22 *Eighth Report and Order,* ¶ 15.

23 *Id.* ¶ 17.

24 *Id.* ¶ 21.

this instance has been appropriately interpreted to require Aureon to calculate its total access rate based on the per-minute, per-mile rate charged by CenturyLink.

This conclusion is underscored by other Commission precedent as well. For example, in describing how the benchmark system would work for VoIP services in the *Connect America Fund Order*, the Commission noted that, under its policies, "competitive LECs should be entitled to charge the same intercarrier compensation as incumbent LECs do **under comparable circumstances**."[25] Thus, by incorporating CenturyLink's per-minute, per-mile rate into the Aureon rate calculation, but using Aureon's mileage, the *Rate Order* ensures that IXCs are paying the rate they would pay the incumbent "under comparable circumstances," rather than the entirely different circumstances AT&T believes should govern the calculation of Aureon's rate.

In short, the Commission's CLEC benchmark policy is premised upon a belief that, while CLECs should be limited in the rates they can charge IXCs for each function that comprises their access services, they should never be precluded from charging for the services they actually provide; this includes billing for mileage traversed on the "actual network used," rather than the hypothetical network AT&T would like to use instead. Accordingly, the Commission's decision in the *Rate Order* to calculate the benchmark rate for Aureon's CEA service based on CenturyLink's transport *rate*, but Aureon's *mileage*, is fully consistent with Commission precedent and Commission rules. The agency thus does not need to revisit its decision and should deny AT&T's Petition.

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[25] *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 F.C.C. Rcd. 17663, ¶ 970 (2011) (emphasis added).

B. The Commission's Decision Empowers the IXCs to Lower Their Costs by Doing More Work Themselves, Thereby Preventing, Rather than Creating, Arbitrage

As the Commission rightfully recognized in the *Rate Order*, AT&T's interpretation of the CLEC benchmark rules is an effort by AT&T to pay Aureon for *less* work than Aureon is actually providing to AT&T. Prior to the Commission's determination that Aureon was a CLEC, no party had ever asserted that Aureon was unable to tariff and bill for the actual transport mileage it provides to long-distance carriers. Thus, AT&T seeks to exploit the classification of Aureon as a CLEC in an effort to pay Aureon something less than what AT&T would have to pay to Aureon if it was instead deemed an ILEC providing identical transport services. As explained more fully below, it follows that AT&T's Petition is an effort by AT&T to engage in regulatory arbitrage for its own benefit.

While AT&T refers to "regulatory arbitrage" in its Petition without providing a definition, the Commission has previously defined arbitrage as "profit-seeking behavior that can arise when a regulated firm is required to set different prices for products or services with a similar cost structure,"[26] and AT&T's preferred outcome fits squarely in this definition. In AT&T's Opposition, AT&T makes clear that the rationale supporting its view of the CLEC benchmark rules is its belief that the rate should be built on the "**assum[ption]** that the IXCs would deliver the calls to the CenturyLink tandem switch closest to the POI that Aureon is currently using to serve the subtending LEC, and [that] CenturyLink transported the calls for

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[26] *In re Developing A Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 F.C.C. Rcd. 9610, ¶ 11 n.18 (2001) (citing Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime* at 1, ¶ 2 n.3 (Federal Communications Commission, OPP Working Paper No. 33, Dec. 2000)). The Commission has also described "regulatory arbitrage" as "businesses making decisions based on regulatory classifications rather than on customers' preferences and innovative and sustainable business plans." *In re Inquiry Concerning High-Speed Access to Internet over Cable & Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 F.C.C. Rcd. 4798, ¶ 90 (2002).

delivery to the subtending LEC's local exchange within 1 mile of CenturyLink's tandem switch."[27] AT&T asserts that this "**assumption** is certainly reasonable, because Aureon itself hands off the traffic to the subtending LECs at those same locations (*e.g.,* in Sioux City, Davenport, Omaha, Spencer, etc.)."[28] AT&T also asserts that it "already has facilities in place that connect AT&T's long distance network to each of the Century Link (*sic*) tandem switches in or near Iowa, in order for AT&T to route traffic to and from CenturyLink end office switches and end users served by CenturyLink."[29]

Thus, AT&T's Petition asks the Commission to set Aureon's CEA rate based on fiction, rather than reality. AT&T wants to pay Aureon *as if* AT&T delivered its own calls to all corners of Iowa while also receiving the great benefit of not actually having to do the work. As the Commission appropriately concluded, the Commission's obligation is to "evaluate the appropriate mileage based on the facts in the record considering Aureon's existing rate structure," not to set a rate based on assumption and hypothesis.[30]

Indeed, throughout AT&T's multiple filings, it does not once discuss the capacity of its existing facilities. Therefore, AT&T never establishes that those facilities have sufficient capacity to carry its CenturyLink-bound traffic *plus* all of the traffic it currently delivers through Aureon to the subtending LECs. There is virtually *zero* chance that AT&T's existing facilities have such excess capacity to enable AT&T to instantaneously begin transporting its own traffic to the closest POI to the subtending ILEC, nor has AT&T submitted any evidence that

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27 AT&T's Opposition at 26.
28 *Id.* at 25.
29 *Id.* at 24.
30 *Rate Order*, ¶ 45.

CenturyLink has sufficient excess capacity available that AT&T could lease to provide transport throughout Iowa.

In practice, given the existing network configurations in Iowa, AT&T likely would have to make a significant financial investment to deploy new facilities throughout Iowa (or convince CenturyLink to do so) if it were to stop relying on Aureon's transport facilities to deliver traffic to the subtending LECs. Indeed, the magnitude of the cost that AT&T would incur to develop its own facilities is the most likely explanation for why AT&T's Petition includes no offer to actually begin delivering its traffic to Aureon's POIs outside of Des Moines, rather than continuing to rely on Aureon's transport network.[31] Thus, the CLECs respectfully submit that the Commission's *Rate Order* got it right in this respect. By utilizing the weighted average mileage on Aureon's network in calculating the benchmark, the Commission has ensured that Aureon gets paid for the services it actually provides. Moreover, the Commission's use of the weighted average mileage ensures that AT&T does not get to shift costs to Aureon that it would otherwise have to bear if CenturyLink was providing the service instead.

The Commission's approach in the *Rate Order* also gives AT&T the power to choose how its traffic is delivered.[32] If AT&T believes that it can more cost-effectively construct its

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[31] Aureon has already stated that "IXCs have the 'flexibility' to exchange 'traffic at any POI.'" Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, at 29, WC Docket No. 18-60, Transmittal No. 36 (May 3, 2018). Thus, AT&T has chosen to continue to deliver its traffic to Aureon in Des Moines. One must assume that AT&T's decision reflects an economically rational conclusion that it is beneficial to utilize Aureon's transport services, rather than constructing its own facilities.

[32] While AT&T contends in its Petition that the Commission has "suggested that Aureon is free to discard its 'current policy of permitting IXCs to interconnect to any POI that is economically feasible,'" AT&T's Petition at 15, the Commission has made no such conclusion on this issue. Rather, in the *Rate Order*, the Commission merely observed that AT&T's arguments rested on a series of unsubstantiated assumptions, one of which is that Aureon's policy would remain unchanged in the face of a series of other changes. *See Rate Order*, ¶ 45. The Commission correctly concluded that it could not set a rate based on AT&T's

own transport facilities to the remote POIs on Aureon's network, then AT&T should do just that. And when AT&T is able to provide its own transport for the majority of the distance, rather than rely on Aureon's transport network, it necessarily follows that Aureon's weighted average mileage in future tariff proceedings will be reduced, thereby also reducing the tariffed rate paid by AT&T. Thus, the Commission has provided AT&T with all the tools it needs to reduce Aureon's future tariffed rate by giving AT&T every opportunity to do the work itself. Until AT&T chooses to do this work, however, the benchmark rate established in the *Rate Order* should remain unchanged.

IV. THE *RATE ORDER* DOES NOT ENCOURAGE ARBITRAGE

AT&T erroneously attempts to make its Petition an extension of the Commission's open rulemaking docket regarding access stimulation.[33] AT&T contends that, if it does not get essentially free transport from Aureon, the Commission's decision in the *Rate Order* necessarily creates an opportunity for arbitrage because "Aureon and the access stimulators that use Aureon's network are fully incentivized to maximize transport mileage, thereby increasing the weighted average mileage and the resulting harm."[34] Similar to its unsubstantiated advocacy in the access stimulation docket, AT&T prefers to cast aspersions, rather than deal with facts.

First, AT&T's assertion that "Aureon and the access stimulators" will act to maximize transport mileage wrongly implies that Aureon and the CLECs (all of whom made the lawful, reasonable business decision to continue serving high volume conferencing services after the

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unsubstantiated assumptions, but has not prejudged the question of whether it would be reasonable for Aureon to modify its current policy of permitting IXCs to make the decision about which POI(s) to deliver traffic to.

[33] *See* AT&T's Petition at 14 (citing *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, 2018 WL 2761596, at *3 (June 5, 2018)).

[34] AT&T's Petition at 15.

FCC clarified the access stimulation rules in 2011) act in concert with one another when it comes to access stimulation. Nothing could be further from the truth. Indeed, Aureon and the CLECs each make independent business decisions based on the Commission's rules.[35] And AT&T provides no evidence—because there is none to provide—to support the innuendo that Aureon has any control or influence over whether CLECs choose to engage in access stimulation in adherence with the Commission's rules adopted in 2011.

Second, there is simply no evidence that any of the access-stimulating CLECs in Iowa are doing anything to "maximize transport mileage." Like the ILECs in Iowa that are members of Aureon, the CLECs only bill for the mileage that they provide to AT&T when they pick up the traffic at Aureon's closest POI. While AT&T continues to falsely represent that CLECs are engaged in "mileage pumping," it has yet to provide any evidence to support these assertions. Instead, AT&T just continues to recycle the same argument based on old facts. As the CLECs have noted in WC Docket 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, there is no evidence that, after the FCC released its decision in *AT&T Corp. v. Alpine Communications, LLC*,[36] any carrier made changes to its routing in order to increase its tariffed transport charges.[37] Thus, the problem with AT&T's continued reliance on the *Alpine* decision to justify its fearmongering is that the conduct resulting

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35 The sharply contrasting views presented by Aureon and the CLECs in Docket No. 18-155 reflect their divergent views as to what the Commission's future access stimulation policy should be.

36 27 F.C.C. Rcd. 11511 (2012).

37 *See* Comments of Competitive Local Exchange Carriers, at 36-37, WC Docket No. 18-155 (July 20, 2018); *see also* Reply Comments of Competitive Local Exchange Carriers, at 13, WC Docket No. 18-155 (Aug. 3, 2018).

in the *Alpine* decision occurred "between 2001 and 2005,"[38] long before the Commission's access stimulations rules were revised.

V. CONCLUSION

For the reasons set forth above, the CLECs represented by these comments respectfully urge the Commission to deny AT&T's Petition for Reconsideration. As explained above, in its *Rate Order*, the Commission properly applied the CLEC benchmark rules and Commission precedent when it decided to calculate the benchmark rate for Aureon's CEA service based on CenturyLink's transport *rate*, but Aureon's *mileage*. AT&T's Petition seeks to shift costs onto Aureon that rightly belong with AT&T. As the Commission's *Rate Order* shows, the CLEC benchmark rules are clear in their meaning, and the way in which those rules were applied to determine the benchmark rate for Aureon's CEA service was correct. No further consideration is necessary; AT&T's Petition should be dismissed.

Dated: September 19, 2018

Respectfully submitted,

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38 *Id.* ¶ 11.